

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ORIGINAL

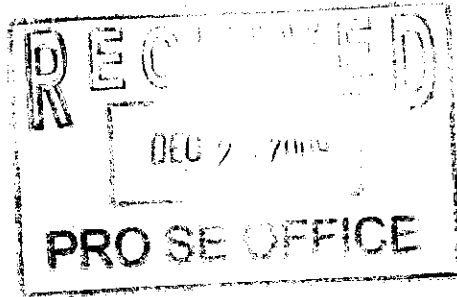
Augustus Payne

Plaintiff,

- against -

HSBC AUTO FINANCE, Terry Owens, CROFFLAND

Defendants.



CV 09 -
COMPLAINT

5671

Jury Trial Demanded

VITALIANO, J.

BLOOM, M.J.

I. Parties: Plaintiff Augustus Payne, resides at 1124 Flatbush Ave Brooklyn N.Y. 11226.

Defendant HSBC AUTO FINANCE, resides at 6602 Convoy Court, San Diego C.A. 92111.

Defendant Terry Owens (customer service representative for HSBC AUTO FINANCE), resides at unknown.

Defendant CROFFLAND (tel-1800-858-0850), resides at unknown.

II. The jurisdiction of the Court is invoked pursuant to Federal Question.

III. Statement of Claim. As of November 2, 2009 HSBC AUTO FINANCE received Interrogatives Depositions for Disclosure & Discovery pursuant to the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure, in regards to an account created through a retail installment contract entered into between myself Augustus Payne and CHASE which HSBC AUTO FINANCE is now unlawfully/illegally collecting payment on. As HSBC AUTO FINANCE has not answered said Interrogatives Depositions for Disclosure & Discovery in violation of the fore mentioned laws, the non-response by HSBC AUTO FINANCE is accepted as a tacit agreement that commercial fraud on the aforementioned instrument/contract/note and account does exists. I have received correspondences dated November 2nd, 5th, and 8th 2009 from HSBC AUTO FINANCE and Terry Owens (a customer service representative with HSBC AUTO FINANCE) specifically, requesting payment and also threatening to repossess my property. As of December 4, 2009 HSBC AUTO FINANCE received a letter from me, once again questioning the validity of the alleged debt, in response to the correspondence from Terry Owens requesting payment and the other correspondences threatening to "repossess" my vehicle one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406. HSBC AUTO FINANCE issued an unlawful/illegal "repossession order" and conspired with CROFFLAND (the company name given to me by a Mr. J.R Vega when I called HSBC AUTO FINANCE on December 19th, 2009 he did not disclose the address of CROFFLAND) and said company used the aforementioned unlawful/illegal order (which is not a valid court order) to unlawfully/illegally take or "repossess" my vehicle. I was

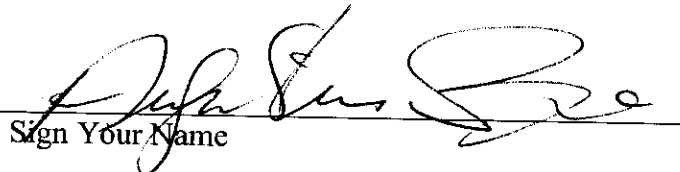
unlawfully/illegally deprived of my property without due process of law on December 18, 2009 at approximately 1:00 a.m. in violation of the United States Constitution Amendment 5, and the New York State Constitution Article 1 § 6 paragraph 2, which both state: no person shall be deprived of life, liberty, or property without due process of law. An individual from CROFFLAND the company which HSBC AUTO FINANCE conspired with to deprive me of my property without due process called me at approximately 1:00 a.m. from his personal cell phone (phone # 1646-703-1125) on December 18, 2009 at approximately 1:00 a.m. to tell me he was towing my vehicle on a "repossession order" from HSBC AUTO FINANCE which is not the equivalent of a court order and when I asked him if he had a lawful/legal court order to tow said vehicle he told me "there is no such thing". This individual refused to give me his name, the name of the company for which he worked or the address of said company, which is now in unlawful/illegal possession of my vehicle. HSBC AUTO FINANCE, Terry Owens, and CROFFLAND have violated my constitutionally secured rights and should be held liable under 42 USC chapter 21 § 1983 which states: §1983. Civil action for deprivation of rights; Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. HSBC AUTO FINANCE, and Terry Owens have also violated the Fair Debt Collection Practices Act 15 USC § 1692f which states: §1692f. Unfair practices; A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Et al see attached affidavit of facts

IV. Remedy. Plaintiff demands the immediate return of his unlawfully/illegally taken or "repossessed" property one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406. Plaintiff demands any and all reports of debt(s) owed to HSBC AUTO FINANCE be removed from his personal credit file disclosure from all three major credit bureaus immediately. Plaintiff demands that HSBC AUTO FINANCE, Terry Owens, and CROFFLAND be held liable to the fullest extent of the laws governing these issues for the violations stated in the attached affidavit of facts. Plaintiff demands HSBC AUTO FINANCE be shut down and its officers/directors be fined and imprisoned for the violations stated in the attached affidavit of facts. Plaintiff demands Terry Owens be fined and imprisoned for the violations stated in the attached affidavit of facts. Plaintiff demands CROFFLAND be shut down and its owners be imprisoned and fined for the violations stated in the attached affidavit of facts. Plaintiff demands HSBC AUTO FINANCE, Terry Owens, and CROFFLAND each be held liable for all court costs, court fees, lost wages, travel expenses, time spent, money spent, unnecessary personal inconvenience, mental anguish, suffering, and damages caused by the events and actions preceding this complaint, the preparation of this complaint, and the subsequent trial in the sum of \$50,000 (fifty thousand dollars). Plaintiff demands necessary damages, pecuniary damages, direct damages, prospective damages, speculative damages, and punitive damages in the sum to be decided by the trial jury. Et al see attached demands for relief.

Date

12/29/09

Sign Your Name



Telephone Number

718-284-0130

United States District Court

Augustus Payne
Plaintiff/Claimant

Case No:

Vs.

HSBC AUTO FINANCE, Terry Owens, CROFFLAND
Defendants

Complaint by way of Affidavit of Facts of Commercial Fraud on Negotiable Instrument, Conspiracy, United States and New York State Constitutional Rights Violations and Demands for Relief

This affidavit is made pursuant to the federal laws and notices of Defenses in respect to payment of contracts/notes/instruments UCC 3-305 & 3-302 along with complaints and demands for relief pursuant to the United States Statutes at Large including the National Bank Act also known as the national Currency Act Public Law Volume 13 38th Congress Stat 99-118 as well as 91 Stat 880 the Actual Law of the prima facie code of the *Fair Debt Collection Practices Act* 15 USC § 1692, and the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, 12 CFR § 226 Contract Disclosure, also 42 USC chapter 21 § 1983, 18 USC chapter 13 § 241 and 242, United States Constitution and the New York State Constitution.

"I Augustus Payne declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

[Made Pursuant to the United States Constitution & Title 28 USCA Section 1746]

Affidavit of Facts

- 1) As of November 2, 2009 HSBC AUTO FINANCE received Interrogatives Depositions for Disclosure & Discovery pursuant to the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure, in regards to an account created through a retail installment contract entered into between myself Augustus Payne and CHASE which HSBC AUTO FINANCE is now unlawfully/illegally collecting payment on. Said interrogatives went unanswered and I became certain that commercial fraud on the aforementioned account and negotiable instrument is taking place.
- 2) As HSBC AUTO FINANCE has not answered said Interrogatives Depositions for Disclosure & Discovery, the non-response by HSBC AUTO FINANCE is accepted as a tacit agreement that commercial fraud on the aforementioned instrument/contract/note and account does exists.
- 3) HSBC AUTO FINANCE is required to register with the United States Department of Treasury as a financial institution and did not provide me with documents that certify said registration in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 4) HSBC AUTO FINANCE has exchanged the original contract/note/instrument for bonds from the United States Treasury and did not provide me with exchange notes certifications and other requested information in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 5) The officers/directors of HSBC AUTO FINANCE as a national bank must oath themselves to follow the laws governing Banks which are; The National Currency Act Statutes at large Public Laws of United States Congress Published at Volume 13 38th Congress Stat99-118 and have not provided me with a copy of said oath(s) or a list of its officers/directors in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 6) HSBC AUTO FINANCE is not the original creditor who actually provided the funds.
- 7) HSBC AUTO FINANCE does not have a bona fide affidavit of assignment with my signature as an assignment for entering into the original contract.
- 8) HSBC AUTO FINANCE is not the Holder/Holder in due course of the original note/contract/instrument pursuant to UCC 3-302.
UCC 3-302. Holder in Due Course.
 - (1) A holder in due course is a holder who takes the instrument
 - (a) for value; and
 - (b) in good faith; and
 - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
 - (2) A payee may be a holder in due course.
 - (3) A holder does not become a holder in due course of an instrument:
 - (a) by purchase of it at judicial sale or by taking it under legal process; or
 - (b) by acquiring it in taking over an estate; or
 - (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.
 - (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

- 9) HSBC AUTO FINANCE can not force an obligation for me to pay the contract/note/instrument based on UCC3-305.

UCC 3-305. Rights of a Holder in Due Course.

To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

- 10) HSBC AUTO FINANCE has not provided me with the requisite verification of the alleged debt required by the Fair Debt Collection Practices Act. In violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 11) HSBC AUTO FINANCE has not provided me with the 1096 and 1098 tax returns or the 1099 OID and the 1099 INT forms for the account created by this note/contract/instrument, account # 50000200110369 on my credit file disclosure and account # 50000319734 on written correspondence from Terry Owens a customer service representative from HSBC AUTO FINANCE, in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 12) HSBC AUTO FINANCE in this contract is serving in the status of a pooler or servicer for the original lender and is receiving benefits from a third party financial institution in the form of stocks, bonds, securities and other commercial items from said third party financial institution.
- 13) HSBC AUTO FINANCE has not provided me with the CUSIP number for the aforementioned stock, bond, or security instrument in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 14) The account # 50000200110369 on my credit file disclosure and account # 50000319734 on written correspondence from Terry Owens (a customer service representative from HSBC AUTO FINANCE) created by the note/contract/instrument are connected to a trust agreement. The trust account number and the name of the trust and the name of the indentured trustee, who is handling and paying the interest on the certified securities on the Depository Trust Corporation relative to this account was not provided to me in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 15) The aforementioned accounts are connected to financial and or securities fraud.

- 16) Copies of the N-8A registration filed pursuant to section 8A of the Investment Company Act of 1940, the 10 K annual report, the S-3 registration statement and the S-4 prospectives filed pursuant to Rule 425 (b) with the Securities and Exchange Commission under section 13 & 15 (d) of the Securities and Exchange Act of 1934 in reference to this account and any certificated or uncertificated stocks, bonds, securities, or other financial instruments associated with this account were not provided to me in violation of the Freedom of Information Act 5 USC § 552, the *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, and 12 CFR § 226 Contract Disclosure.
- 17) HSBC AUTO FINANCE has not provide me with a loan, line of credit, or financing and cannot provide documentary proof that the assets were provided from that financial institutions to myself. According to the United States Statutes at Large including the National Bank Act also known as the national Currency Act Public Law Volume 13 38th Congress Stat 99-118 states that financial institutions cannot Loan the capital stock of their Directors or the checkbook deposits of their customers. Any one of these actions would violate the original Public Statutes at Large 13th Congress which are positive law placed as prima facie law at United States Code Title 12 Banks and Banking.
- 18) There is no bona fide original commercial instrument/note/contract between HSBC AUTO FINANCE and myself containing my bona fide signature.
- 19) There have been charge offs, insurance claims, tax write-offs, and tax deductions made by HSBC AUTO FINANCE regarding account # 50000200110369 on my credit file disclosure and account # 50000319734 on written correspondence from Terry Owens a customer service representative from HSBC AUTO FINANCE.
- 20) At the time the original contract/note/instrument was executed, I was not appraised of the meaning of the terms and conditions of said original contract, and full disclosure of the nature of the contract/note/instrument was not provided to me pursuant to UCC 3-305 (2)(c) aforementioned in point number 9
- 21) At the time the original contract/note/instrument was executed, I was not appraised that the contract/note/instrument was a private credit instrument.

22) As of December 4, 2009 HSBC AUTO FINANCE received a letter from me in response to a correspondence from Terry Owens (a customer service representative with HSBC AUTO FINANCE), and other correspondences threatening to "repossess" my vehicle one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406. Said letter stated

Dear HSBC Auto Finance:

I have received a letter from you requesting payment on the above referenced alleged account. I will pay the 1,365.75 and/or any other amount that is lawfully owed to HSBC Auto Finance by me, however in order for me to pay any amount that is allegedly owed to HSBC Auto Finance by me I need the original contract between HSBC Auto Finance and myself verified, validated and proved as being absent of fraud of any kind. HSBC Auto Finance has received as of November 2, 2009 depositions for disclosure and discovery, upon completion and return (with proof of receipt) of said depositions along with the corresponding documents requested in said depositions, payment will be made in full by me to HSBC Auto Finance on any and all contract/account verified, validated and proved as being absent of fraud of any kind. If the aforementioned depositions are not returned I will accept that as a tacit agreement that the alleged contract/account/debt is in fact fraudulent, unverifiable, invalid and is therefore nugatory and void. I will not dishonor any obligation to a contract that I am lawfully a party to and that is absent of fraud of any kind. This is not an attempt to dispute an alleged debt just a lawful request for verification, validation and proof of the absence of fraud of any kind. If repossession of my conveyance/vehicle is allowed by law please send me a written correspondence citing that specific law or laws that provide for that action. If referral of this account to your attorneys for suit, to effect collection is allowed by law please send me a written correspondence citing that specific law or laws that provide for such action.

Thank you

Augustus Payne

This letter just like the Interrogatives Depositions for Disclosure & Discovery also went unanswered. Taken once again as a tacit agreement that fraud does exist.

23) HSBC AUTO FINANCE, nor Terry Owens have never lawfully/legally possessed my vehicle one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406 and never had the lawful/legal ability or right to "repossess" said vehicle.

24) HSBC AUTO FINANCE, and Terry Owens are in violation of the Fair Debt Collection Practices Act 15 USC § 1692f which states: §1692f. Unfair practices; A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

- 25) HSBC AUTO FINANCE issued an unlawful/illegal "repossession order" and conspired with CROFFLAND and said company used the aforementioned unlawful/illegal order to unlawfully/illegally take or "repossess" my vehicle. I was unlawfully/illegally deprived of my property without due process of law on December 18, 2009 at approximately 1:00 a.m. in violation of the United States Constitution Amendment 5, and the New York State Constitution Article 1 § 6 paragraph 2, which both state: no person shall be deprived of life, liberty, or property without due process of law.
- 26) CROFFLAND never lawfully/legally possessed my vehicle one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406 and never had the lawful/legal ability to take or "repossess" said vehicle.
- 27) An individual from CROFFLAND the company which HSBC AUTO FINANCE conspired with to deprive me of my property without due process called me at approximately 1:00 a.m. from his personal cell phone (phone # 1646-703-1125) on December 18, 2009 at approximately 1:00 a.m. to tell me he was towing my vehicle on a "repossession order" from HSBC AUTO FINANCE which is not the equivalent of a court order and when I asked him if he had a lawful/legal court order to tow said vehicle he told me "there is no such thing". This individual refused to give me his name, the name of the company for which he worked or the address of said company, which is now in unlawful/illegal possession of my vehicle.
- 28) A "repossession order" from a financial institution is not a lawful/legal order. The only lawful/legal order to deprive someone of property comes from a court of competent jurisdiction after due process of law.
- 29) HSBC AUTO FINANCE, Terry Owens, and CROFFLAND have violated my constitutionally secured rights and should be held liable under 42 USC chapter 21 § 1983 which states: §1983. Civil action for deprivation of rights; Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

30) HSBC AUTO FINANCE, Terry Owens, and CROFFLAND conspired to take or "repossess" my vehicle and have violated my constitutionally secured rights and should be held liable under 18 USC chapter 13 § 241 which states: §241. Conspiracy against rights; If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured They shall be fined under this title or imprisoned not more than ten years, or both.

31) HSBC AUTO FINANCE, Terry Owens, and CROFFLAND have violated my constitutionally secured rights and should be held liable under 18 USC chapter 13 § 242 which states: §242. Deprivation of rights under color of law; Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both.

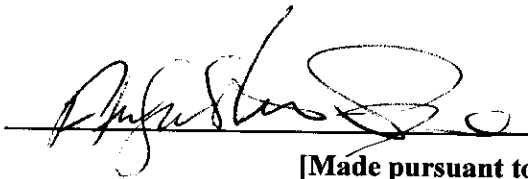
Demands for Relief

Wherefore I Augustus Payne the Plaintiff states the basis for all my claims are rooted in law I demand relief in the following:

- 1) Plaintiff demands that the claims made in the foregoing affidavit of facts and the demands made in this motion be only assessed within the realm of the laws that governs the issues at hand which are UCC 3-305 & 3-302 along with the United States Statutes at Large including the National Bank Act also known as the national Currency Act Public Law Volume 13 38th Congress Stat 99-118 as well as 91 Stat 880 the Actual Law of the prima facie code of the *Fair Debt Collection Practices Act* 15 USC § 1692, and the Freedom of Information Act 5 USC § 552, applicable portions of *Truth in Lending Act* 15 USC § 1601, *Regulation Z*, 12 CFR § 226 Contract Disclosure, also 42 USC chapter 21 § 1983, 18 USC chapter 13 § 241 and 242, United States Constitution and the New York State Constitution.
- 2) Plaintiff demands a jury trial.
- 3) Plaintiff demands that the court subpoena all the requested records and documentation from the Interrogatives Depositions for Disclosure & Discovery which was received by HSBC AUTO FINANCE on November 2, 2009 that prove that fraud on the aforementioned contract/note/instrument and account(s) does exist.
- 4) Plaintiff demands that HSBC AUTO FINANCE identify the source of the funds as Federal law proves that the Directors of the Bank 1) cannot lend their Stock, 2) Banks cannot lend the assets of their customers, and 3) banks cannot provide a line of credit without identifying the source of the funds.
- 5) Plaintiff demands an audit of the accounts mentioned in the foregoing affidavit of facts be done to see if there ever was a loan/line of credit/financing extended to the plaintiff by HSBC AUTO FINANCE, and to see if said accounts are connected to financial and or securities fraud.
- 6) Plaintiff demands the immediate return of his unlawfully/illegally taken or "repossessed" property one white 2002 Acura 3.2 TL vehicle identification number L9UUA56932AO46406.
- 7) Plaintiff demands any and all reports of debt(s) owed to HSBC AUTO FINANCE be removed from his personal credit file disclosure from all three major credit bureaus immediately.
- 8) Plaintiff demands that HSBC AUTO FINANCE, Terry Owens, and CROFFLAND be held liable to the fullest extent of the fore mentioned laws governing these issues for the violations stated in the aforementioned affidavit of facts.
- 9) Plaintiff demands HSBC AUTO FINANCE be shut down and its officers/directors be fined and imprisoned for the violations stated in the aforementioned affidavit of facts.
- 10) Plaintiff demands Terry Owens be fined and imprisoned for the violations stated in the aforementioned affidavit of facts.

- 11) Plaintiff demands CROFFLAND be shut down and its owners be imprisoned and fined for the violations stated in the aforementioned affidavit of facts.
- 12) Plaintiff demands HSBC AUTO FINANCE, Terry Owens, and CROFFLAND each be held liable for all court costs, court fees, lost wages, travel expenses, time spent, money spent, unnecessary personal inconvenience, mental anguish, suffering, and damages caused by the events and actions preceding this complaint, the preparation of this complaint, and the subsequent trial in the sum of \$50,000 (fifty thousand dollars).
- 13) Plaintiff demands necessary damages, pecuniary damages, direct damages, prospective damages, speculative damages, and punitive damages in the sum to be decided by the trial jury.

I Augustus Payne declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Without Prejudice All Rights Reserved

[Made pursuant to Title 28USCA Section 1746]


CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE NEW YORK

COUNTY Kings

This document was subscribed before me this 23rd day of December, 2009

Notary Seal


REGINALD BERRY
Notary Public, State of New York
No. 62-1523920
Qualified in Kings County
Commission Expires September 1, 2010


Signature of Notary

My commission expires: Sept 01, 2010